

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Case No. 08-20516

Montrell Moore,

Honorable Sean F. Cox

Defendant..

ORDER DENYING
DEFENDANT'S REQUEST FOR RESENTENCING

Following his guilty plea under a Rule 11 plea agreement, this Court sentenced Defendant Montrell Moore ("Defendant") to a term of 85 months imprisonment on his conviction for possession of a firearm by a felon.

Defendant then filed an appeal. In an Opinion & Order issued on January 25, 2010, the United States Court of Appeals for the Sixth Circuit dismissed the appeal because Defendant had waived the right to appeal any sentence within the guideline range set forth in his plea agreement.

Thereafter, Defendant filed a *pro se* letter with this Court, alleging errors regarding his sentencing and requesting that the Court vacate his sentence. Defendant's letter does not cite the legal authority under which he asks this Court to vacate his sentence.

The Court notes that Defendant may seek relief under 28 U.S.C. § 2255, which authorizes a court to set aside or correct a federal sentence imposed "in violation of the Constitution or laws of the United States." In view of the strict limitations on availability of

such relief contained in the Antiterrorism and Effective Death Penalty Act of 1996, however, this Court is not free to “recharacterize a motion purportedly made under some other rule as a motion made under § 2255 unless (a) the movant, with knowledge of the potential adverse consequences of such recharacterization, agrees to have the motion so recharacterized, or (b) the court finds that, notwithstanding its designation, the motion should be considered as made under § 2255 because of the nature of the relief sought, and offers the movant the opportunity to withdraw the motion rather than have it so recharacterized.” *In re Shelton*, 296 F.3d 620, 622 (6th Cir. 2002).

This Court will not recharacterize Defendant’s motion as the one filed under 28 U.S.C. § 2255 and will instead leave it to Defendant to file an appropriate motion to vacate his sentence.¹ Accordingly, IT IS ORDERED that Defendant’s letter requesting resentencing is DENIED.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: March 25, 2010

I hereby certify that on March 25, 2010, a copy of the foregoing document was served upon counsel of record by electronic means and upon Montrell Moore via First Class Mail at the address below:

Montrell Moore #42682-039
FCI Terre Haute
Federal Correctional Institution
P. O. Box 33
Terre Haute, IN 47808

S/Jennifer Hernandez
Case Manager

¹Along with Defendant’s copy of this Order, the Court is including a copy of a form, available on the United States District Court for the Eastern District of Michigan’s website, for filing a motion under 28 U.S.C. § 2255.